

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

In the Matter of:)
)
POINTCLEAR SOLUTIONS, INC.,) Case No. 18-83286-CRJ-11
Tax ID/EIN: 20-4961564) Chapter 11
)
Debtor.)

RESPONSE TO MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL

Comes now, Progress Bank and Trust (“Progress”), an under-secured creditor of the Debtor, who states unto the Court as follows:

1. Debtor filed for protection under Chapter 11 of the United States Bankruptcy Code on November 2, 2018.
2. Debtor is continuing the operation and management of its business as a Debtor-in-Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
3. Progress has a perfected security interest in all accounts receivable of Debtor, and the proceeds thereof.
4. Section 363 of the Bankruptcy Code prohibits Debtor’s use of cash collateral unless (a) either Progress consents; or (b) after notice and a hearing, the Court authorizes such use in accordance with the requirements of Section 363 of the Bankruptcy Code.
5. Progress has not consented to the use of the collateral in which it has a security interest.
6. Progress was only served yesterday with notice (required by either Section 363(c)(2)(B) of the Bankruptcy Code or Rule 4001(b) of the Federal Rules of Bankruptcy Procedure) of today’s hearing by Debtor seeking court authorization to use cash collateral.
7. Debtor’s use of cash collateral in which Progress has an interest violates Section 363©, (e), and (f) of the Bankruptcy Code and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.
8. Progress does not have, and has not been offered adequate protection.

9. As grounds for such use of Progress' cash collateral, Debtor's Motion states only that Debtor anticipates being profitable in the next three months. Debtor's "anticipation" of being profitable is not sufficient adequate protection.

10. Progress is under-collateralized in that Debtor's obligation to Progress exceeds the fair/value of its collateral.

WHEREFORE, Progress requests that this Court (a) enter an Order prohibiting the Debtor from using any cash collateral in which Progress has an interest until Debtor complies with Section 363 of the Bankruptcy Code and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure; or (b) enter such Order without a hearing or in the alternative, after notice and a prompt hearing enter such an Order. Progress requests such additional, further, and other relief as this Court deems just and proper.

/s/ S. Dagnal Rowe

S. Dagnal Rowe

WILMER & LEE, P.A.

Attorneys for Progress Bank and Trust

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been served upon the Debtor, PointClear Solutions, Inc., 908 Merchants Walk, Huntsville, AL 35801, Stuart M. Maples, Esq., Maples Law Firm, P.C., 200 Clinton Avenue, West, Suite 1000, Huntsville, AL 35801, and each of the parties or entities listed on the attached Creditor Matrix, by placing same in the United States mail, properly addressed and postage prepaid on this 7th day of November, 2018.

/s/ S. Dagnal Rowe

S. Dagnal Rowe

Label Matrix for local noticing

1126-8

Case 18-83286-CRJ11

NORTHERN DISTRICT OF ALABAMA

Decatur

Wed Nov 7 06:11:46 CST 2018

*5421 Equities, LLC

c/o Olmstead

Properties Inc.

575 Eighth Ave.

STE 2400

New York, NY 10018-3024

*Atlanta Office Technologies

TIAA Commercial

Finance, Inc. PO Box 911608

Denver, CO 80291-1608

PointClear Solutions, Inc.

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U. S. Bankruptcy Court

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Decatur, AL 35602-2775

*6th Man Movers

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Nashville, TN 37210-2156

*Alabama Department of

Revenue

Withholding Tax Section

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Montgomery, AL 36132-7483

*Derek Dean

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Hoover, AL 35244-3355

*Gateway Poplar, Inc.

Commons

File #54948

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End of Label Matrix
Mailable recipients 28
Bypassed recipients 0
Total 28